IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6532 of 1997

Shri Manik Uttamrao Tote
At Post Pangari Gasauri
Taluka Madha Dist. Jalna ..Petitioner

vs.

1. State of Maharashtra
through its Secretary
Tribal Development Dept.
Mantralaya, Mumbai 400 032

2. Chairman
Committee for Scrutiny and
Verification of Tribe Claims
Maharashtra State, Nashik

3. Tahsildar & Exlecutive
Magistrate, Partur, Dist.Jalna

4. Chief Executive Officer
Zilla Parishad, Jalna

5. Zilla Parishad, Jalna ..Respondents

Shri R.K.Mendadkar for petitioners
Shri Y.D.Mulani, A.G.P. for respondent nos. 1 to 3
Respondent nos.4 and 5 are served.

CORAM: A.P.SHAH
S.U.KAMDAR JJ.
10th Setember, 2004

ORAL JUDGMENT:(Per A.P.Shah J.)

1. We have heard Shri Mendadkar appearing for the petitioner and the learned A.G.P. for respondent nos. 1 to 3. Respondent nos. 4 and 5 are served.

2. This petition can be allowed on a short ground. The Caste Scrutiny Committee in the impugned order stated that in support of the tribe claim of the

petitioner that he belongs to Mahadev Koli in all 28 documents were produced. The Committee then proceeded to observe that the candidate did not furnish any pressing document such as an extract of birth, school record pertaining to his parents and the documents are recent ones i.e. after the issuance of the first Presidential Order 1950 notifying the scheduled tribe. Therefore, these documents cannot be considered as conclusive proof to determine the candidate's tribe claim. The Committee further observed thus:

> The candidate has runished an affidavit and decision in respect of Shankar Gangaram Amberao in support of his tribe claim. It is to be mentioned here that no ratio of the said decision is applicable to the instant case as will be evident from the observations made by the Hon'ble High Court in Writ Petition No.2282/80 combined with W.P.No.2338/80 that. However, we also want to clarify that this judgment is not meant as a resjudicant betweeen these families and Government. If some other members from the families apply for admissison to the college under the reserved seat meant for the Scheduled Tribe and if the Director of Social Welfare is able to produce more

evidence the claim of this applicant members in their petitions will considered on merits."

2. It is impossible to sustain the order of the Scrutiny Committee. In our opinion, the approach of the Committee cannot be said to be in consonance with law and cannot be approved. If the documents pertaining to the period after the Presidential Order 1950 are produced they cannot be completely ignored. Again as held by this Court as well as the Supreme Court "conclusive proof is not necessary. What is required to be seen is the probative value of the documents which are produced before the Committee and relied upon by the claimants. In the instant case, since no document prior to 1950 is on record, it was incumbent on the Caste Scrutiny Committee to consider the probative value of all the documents which have been placed on record including the decision in respect of Shankar Gangaram Amberao, a close relation of the petitioner and take appropriate decision in that behalf.

3. In the result the order of the Committee is quashed and set aside and the matter if remitted to the Scrutiny Committee to consider the same in accordance with law keeping in view all the

documents which are on record. The Committee is directed to take the decision in the matter as expeditiously as possible and preferably within 3 months from today. In case the scrutiny committee’s decision is adverse to the petitioner it will not be implemented for a period of four weeks from the date of its communication to the petitioner.

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Date of Judgment: 10th Septembner, 2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U.KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?